

Message Text

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ACTION L-03

INFO OCT-01 ARA-14 ISO-00 CA-01 JUSE-00 SS-15 OPR-02
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FM AMEMBASSY MEXICO
TO SECSTATE WASHDC PRIORITY 9649

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E. O. 11652: N/A
TAGS: CPRS, US, MX
SUBJECT: EXTRADITION TREATY NEGOTIATIONS-MEXICO

REF: STATE 95208
FOR L AND OPR/LS

DEPARTMENT PASS JUSTICE

1. FOLLOWING ARE PROVISIONS OF DRAFT EXTRADITION
TREATY AGREED TO AS OF MEETING APRIL 19. TENTATIVE
AGREEMENT COVERS PREAMBLE TO PARAGRAPH 2 OF ARTICLE
10.

A) BEGIN QUOTE - DRAFT EXTRADITION TREATY BETWEEN
THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN
STATES

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE
GOVERNMENT OF THE UNITED MEXICAN STATES;

DESIRING TO COOPERATE MORE CLOSELY IN THE FIGHT
AGAINST CRIME AND, TO THIS END, TO MUTUALLY RENDER
BETTER ASSISTANCE IN MATTERS OF EXTRADITION;

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HAVE AGREED AS FOLLOWS:
ARTICLE 1 - OBLIGATION TO EXTRADITE - (1) THE CON-
TRACTING PARTIES AGREE TO MUTUALLY EXTRADITE, SUBJECT
TO THE PROVISIONS OF THIS TREATY, PERSONS WHO THE
COMPETENT AUTHORITIES OF THE REQUESTING PARTY HAVE
CHARGED WITH AN OFFENSE OR HAVE FOUND GUILTY OF
COMMITTING AN OFFENSE, OR ARE WANTED BY SAID AUTHOR-

ITIES TO COMPLETE A JUDICIALLY PRONOUNCED PENALTY OF DEPRIVATION OF LIBERTY FOR AN OFFENSE COMMITTED WITHIN THE TERRITORY OF THE REQUESTING PARTY.

(2) FOR AN OFFENSE COMMITTED OUTSIDE THE TERRITORY OF THE REQUESTING PARTY, THE REQUESTED PARTY SHALL GRANT EXTRADITION IF:

(A) ITS LAWS WOULD PROVIDE FOR THE PUNISHMENT OF SUCH AN OFFENSE COMMITTED IN SIMILAR CIRCUMSTANCES, OR

(B) THE PERSON SOUGHT IS A NATIONAL OF THE REQUESTING PARTY, AND THAT PARTY HAS JURISDICTION UNDER ITS OWN LAWS TO TRY THAT PERSON.

ARTICLE 2 - EXTRADITABLE OFFENSES - (1) EXTRADITION SHALL TAKE PLACE, SUBJECT TO THIS TREATY, FOR INTENTIONAL ACTS WHICH FALL WITHIN ANY OF THE CLAUSES OF THE APPENDIX AND ARE PUNISHABLE IN ACCORDANCE WITH THE LAWS OF BOTH CONTRACTING PARTIES BY DEPRIVATION OF LIBERTY WHICH SHALL NOT BE LESS THAN ONE YEAR.

(2) IF EXTRADITION IS REQUESTED FOR THE EXECUTION OF A SENTENCE, THERE SHALL BE THE ADDITIONAL REQUIREMENT THAT THE PART OF THE SENTENCE REMAINING TO BE SERVED SHALL NOT BE LESS THAN SIX MONTHS.

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(3) EXTRADITION SHALL ALSO BE GRANTED FOR INTENTIONAL ACTS WHICH, ALTHOUGH NOT BEING INCLUDED IN THE APPENDIX, ARE:

(A) PUNISHABLE, IN ACCORDANCE WITH THE LAWS OF BOTH CONTRACTING PARTIES, BY A DEPRIVATION OF LIBERTY WHICH SHALL NOT BE LESS THAN ONE YEAR;

(B) CONSIDERED BY THE LAWS OF THE UNITED STATES AS FELONIES.

(4) SUBJECT TO THE CONDITIONS ESTABLISHED IN PARAGRAPHS 1, 2 AND 3, EXTRADITION SHALL ALSO BE GRANTED:

(A) FOR THE ATTEMPT TO COMMITTYGNOP
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TO COMMIT AN OFFENSE; OR THE PARTICIPATION IN THE
EXECUTION OF AN OFFENSE;

(B) WHEN, FOR THE PURPOSE OF GRANTING JURISDICTION TO THE UNITED STATES GOVERNMENT, TRANSPORTATION OF PERSONS OR PROPERTY, THE USE OF THE MAIL OR OTHER MEANS OF CARRY-

ING OUT INTERSTATE OR FOREIGN COMMERCE, IS ALSO AN ELEMENT
OF THE OFFENSE.

ARTICLE 3 - EVIDENCE REQUIRED - EXTRADITION SHALL BE
GRANTED ONLY IF THE EVIDENCE BE FOUND SUFFICIENT,
ACCORDING TO THE LAWS OF THE REQUESTED PARTY, EITHER TO
JUSTIFY THE COMMITMENT FOR TRIAL OF THE PERSON SOUGHT
IF THE OFFENSE OF WHICH HE HAS BEEN ACCUSED HAD BEEN
COMMITTED IN THAT PLACE OR TO PROVE THAT HE IS THE
PERSON CONVICTED BY THE COURTS OF THE REQUESTING PARTY.

ARTICLE 4 - TERRITORIAL APPLICATION - (1) FOR THE

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C O R R E C T E D C O P Y (FOR TEXT)

PURPOSES OF THIS TREATY, THE TERRITORY OF A CONTRACTING
PARTY SHALL INCLUDE ALL THE TERRITORY UNDER THE JURIS-
DICTION OF THAT CONTRACTING PARTY, INCLUDING AIRSPACE
AND TERRITORIAL WATERS AND VESSELS AND AIRCRAFT
REGISTERED IN THAT CONTRACTING PARTY IF ANY SUCH AIR-
CRAFT IS IN FLIGHT OR IF ANY SUCH VESSEL IS ON THE
HIGH SEAS WHEN THE OFFENSE IS COMMITTED.

(2) FOR THE PURPOSES OF THIS TREATY, AN AIRCRAFT SHALL
BE CONSIDERED TO BE IN FLIGHT AT ANY TIME FROM THE

MOMENT WHEN ALL ITS EXTERNAL DOORS ARE CLOSED FOLLOWING THE EMBARKATION UNTIL THE MOMENT WHEN ANY SUCH DOOR IS OPENED FOR DISEMBARKATION.

ARTICLE 5 - POLITICAL AND MILITARY OFFENSES - (1) EXTRADITION SHALL NOT BE GRANTED WHEN THE OFFENSE FOR WHICH IT IS REQUESTED IS POLITICAL OR OF A POLITICAL CHARACTER.

IF ANY QUESTION ARISES AS TO THE APPLICATION OF THE FOREGOING PARAGRAPH, THE EXECUTIVE AUTHORITY OF THE REQUESTED PARTY SHALL DECIDE.

(2) FOR THE PURPOSE OF THIS TREATY, THE FOLLOWING OFFENSES SHALL NOT BE CONSIDERED TO BE OFFENSES INCLUDED IN PARAGRAPH 1:
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(A) THE MURDER OR OTHER WILLFUL CRIME AGAINST THE LIFE OR PHYSICAL INTEGRITY OF A HEAD OF STATE OR HEAD OF GOVERNMENT OR OF HIS FAMILY, INCLUDING ATTEMPTS TO COMMIT SUCH AN OFFENSE.

(B) AN OFFENSE WHICH THE CONTRACTING PARTIES HAVE THE OBLIGATION TO PROSECUTE BY REASON OF A MULTILATERAL INTERNATIONAL AGREEMENT.

(3) EXTRADITION SHALL NOT BE GRANTED WHEN THE OFFENSE FOR WHICH EXTRADITION IS REQUESTED IS A PURELY MILITARY OFFENSE.

ARTICLE 6 - NON BIS IN IDEM - (1) EXTRADITION SHALL NOT BE GRANTED WHEN THE PERSON SOUGHT HAS BEEN PROSECUTED OR HAS BEEN TRIED AND CONVICTED OR ACQUITTED BY THE REQUESTED PARTY FOR THE OFFENSE FOR WHICH EXTRADITION IS REQUESTED.

(2) WHEN THE COMPETENT AUTHORITIES OF THE REQUESTED PARTY HAVE DECIDED NOT TO PROSECUTE THE PERSON SOUGHT FOR THE OFFENSE FOR WHICH HIS EXTRADITION IS BEING REQUESTED OR HAVE DECIDED TO DISCONTINUE ANY CRIMINAL PROCEDURE WHICH HAS BEEN INITIATED AGAINST HIM, EXTRADITION MAY BE REFUSED.

ARTICLE 7 - LAPSE OF TIME - EXTRADITION SHALL NOT BE GRANTED WHEN THE PROSECUTION OR THE ENFORCEMENT OF THE PENALTY FOR THE OFFENSE FOR WHICH EXTRADITION HAS BEEN SOUGHT HAS BECOME BARRED BY LAPSE OF TIME ACCORDING TO THE LAWS OF THE REQUESTING OR REQUESTED PARTY.

ARTICLE 8 - CAPITAL PUNISHMENT - WHEN THE OFFENSE FOR WHICH EXTRADITION IS REQUESTED IS PUNISHABLE BY DEATH UNDER THE LAWS OF THE REQUESTING PARTY AND THE LAWS OF THE REQUESTED PARTY DO NOT PERMIT SUCH PUNISH-
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MENT FOR THAT OFFENSE, EXTRADITION MAY BE REFUSED
UNLESS THE REQUESTING PARTY FURNISHES SUCH ASSURANCES
AS THE REQUESTED PARTY CONSIDERS SUFFICIENT THAT THE
DEATH PENALTY SHALL NOT BE IMPOSED, OR, IF IMPOSED,
SHALL NOT BE EXECUTED.

ARTICLE 9 - EXTRADITION OF NATIONALS - (1) NEITHER
CONTRACTING PARTY SHALL BE BOUND TO DELIVER UP ITS OWN
NATIONALS, BUT THE EXECUTIVE AUTHORITY OF THE REQUESTED
PARTY SHALL, IF NOT PREVENTED BY THE LAWS OF THAT PARTY,
HAVE THE POWER TO DELIVER THEM UP IF, IN ITS DISCRETION,
IT BE DEEMED PROPER TO DO SO.

(2) IF EXTRADITION IS NOT GRANTED PURSUANT TO PARAGRAPH
1 OF THIS ARTICLE, THE REQUESTED PARTY SHALL SUBMIT THE
CASE TO ITS COMPETENT AUTHORITIES FOR THE PURPOSE OF
PROSECUTION, PROVIDED THAT PARTY HAS JURISDICTION OVER
THE OFFENSE.

ARTICLE 10 - EXTRADITION PROCEDURES AND REQUIRED DOCU-
MENTS - (1) THE REQUEST FOR EXTRADITION SHALL BE MADE
THROUGH THE DIPLOMATIC CHANNEL.

(2) THE REQUEST FOR EXTRADITION SHALL CONTAIN THE
DESCRIPTION OF THE OFFENSE FOR WHICH EXTRADITION IS
REQUESTED AND SHALL BE ACCOMPANIED BY:

(A) A STATEMENT OF THE FACTS OF THE CASE.

(B) THE TEXT OF THE LEGAL PROVISIONS DESCRIBING THE
ESSENTIAL ELEMENTS OF THE OFFENSE.

(C) THE TEXT OF THE LEGAL PROVISIONS DESCRIBING THE
PUNISHMENT FOR THE OFFENSE.

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(D) THE TEXT OF THE LAWS RELATING TO THE TIME LIMIT
ON THE PROSECUTION OR THE EXECUTION OF THE PUNISHMENT
OF THE OFFENSE.

(E) THE FACTS AND PERSONAL INFORMATION OF THE
ACCUSED WHICH WILL PERMIT HIS IDENTIFICATION, AND,
WHERE POSSIBLE, INFORMATION CONCERNING HIS LOCATION.

(3) - - END QUOTE

B. SPANISH TEXT FOLLOWS: QUOTE - PROYECTO DE TRATADO
DE EXTRADICION - EL GOBIERNO DE LOS ESTADOS UNIDOS
MEXICANOS Y EL GOBIERNO DE LOS ESTADOS UNIDOS DE
AMERICA, DESEOSOS DE COOPERAR MAS ESTRECHAMENTE EN LA
LUCHA CONTRA LA DELINCUENCIA Y DE PRESTARSE MUTUAMENTE,
CON ESE FIN, UNA MAYOR ASISTENCIA EN MATERIA DE
EXTRADICION, HAN ACORDADO LO SIGUIENTE:

ARTICULO 1 - OBLIGACION DE EXTRADITAR - (1) LAS
PARTES CONTRATANTES SE COMPROMETEN A ENTREGAR MUTUA-
MENTE, CON SUJECION A LAS DISPOSICIONES DE ESTE
TRATADO, A LAS PERSONAS RESPECTO DE LAS CUALES LAS
AUTORIDADES COMPETENTES DE LA PARTE REQUERENTE HAYAN
INICIADO UN PROCEDIMIENTO PENAL O QUE HAYAN SIDO
DECLARADAS RESPONSABLES DE UN DELITO O QUE SEAN RECLA-
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MADAS POR DICHAS AUTORIDADES PARA EL CUMPLIMIENTO
DE UNA PENA DE PRIVACION DE LIBERTAD IMPUESTA JUDI-
CIALMENTE.

ARTICULO 2 - DELITOS QUE DARAN LUGAR A LA EXTRADI-
CION - (1) DARAN LUGAR A LA EXTRADICION CONFORME A
ESTE TRATADO LAS CONDUCTAS INTENCIONALES QUE,
ENCAJANDO DENTRO DE CUALQUIERA DE LOS INCISOS DEL
APENDICE, SEAN PUNIBLES CONFORME A LAS LEYES DE
AMBAS PARTES CONTRATANTES CON UNA PENA DE PRIVACION
DE LA LIBERTAD CUYO MAXIMO NO SEA MENOR DE UN AÑO.

(2) SI LA EXTRADICION SE SOLICITA PARA LA EJECUCION DE
UNA SENTENCIA, SE REQUERIRA ADEMAS QUE LA PARTE DE
LA SENTENCIA QUE AUN FALTE POR CUMPLIR NO SEA MENOR DE
SEIS MESES.

(3) DARAN TAMBIEN LUGAR A LA EXTRADICION LAS CONDUCTAS INTENCIONALES QUE, SIN ESTAR INCLUIDAS EN EL APENDICE:

(A) SEAN PUNIBLES, CONFORME A LAS LEYES DE AMBAS PARTES CONTRATANTES, CON UNA PENA DE PRIVACION DE LIBERTAD CUYO MAXIMO NO SEA MENOR DE UN AÑO.

(B) ESTEN CONSIDERADAS EN LAS LEYES DE LOS ESTADOS UNIDOS COMO DELITOS GRAVES.

(4) BAJO LAS CONDICIONES ESTABLECIDAS EN LOS PARRAFOS 1, 2 Y 3, LA EXTRADICION TAMBIEN SERA CONCEDIDA:

(A) POR LA TENTATIVA DE COMETER UN DELITO; LA ASOCIACION PARA PREPARARLO Y EJECUTARLO; O LA PARTICIPACION EN SU EJECUCION.

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(B) CUANDO PARA LOS EFECTOS DE ATRIBUIR JURISDICCION AL GOBIERNO DE LOS ESTADOS UNIDOS, EL TRANSPORTE DE PERSONAS O DE BIENES, EL USO DE LOS CORREOS U OTROS MEDIOS DE REALIZAR ACTOS DE COMERCIO INTERESTATAL O CON EL EXTRANJERO SEA UN ELEMENTO DEL DELITO.

ARTICULO 3 - PRUEBAS NECESARIAS - SOLO SE CONCEDERA LA EXTRADICION SI SE DETERMINA QUE LAS PRUEBAS SON SUFICIENTES, CONFORME A LAS LEYES DE LA PARTE REQUERIDA, BIEN PARA JUSTIFICAR EL ENJUICIAMIENTO DEL RECLAMADO SI EL DELITO DEL CUAL SE LE ACUSA HUBIESE SIDO COMETIDO EN ESE LUGAR, BIEN PARA PROBAR QUE ES LA PERSONA CONDENADA POR LOS TRIBUNALES DE LA PARTE REQUIRENTE.

ARTICULO 4 - AMBITO TERRITORIAL DE APLICACION - (1) A LOS EFECTOS DE ESTE TRATADO, EL TERRITORIO DE UNA DE LAS PARTES CONTRATANTES COMPRENDE TODO EL TERRITORIO, INCLUYENDO EL ESPACIO AEREO Y LAS AGUAS TERRITORIALES SOMETIDAS A SU JURISDICCION, ASI COMO LOS BUQUES Y AVIONES MATRICULADOS EN ELLA CUANDO SE ENCUENTREN EN VUELO O EN ALTA MAR EN EL MOMENTO DE COMETERSE EL DELITO.

(2) PARA LOS EFECTOS DE ESTE TRATADO, UNA AERONAVE SERA CONSIDERADA EN VUELO TODO EL TIEMPO QUE MEDIE ENTRE EL MOMENTO EN QUE TODAS SUS PUERTAS QUE DAN AL EXTERIOR HAYAN SIDO CERRADAS CON POSTERIORIDAD AL EMBARQUE HASTA EL MOMENTO EN QUE CUALQUIERA DE ESAS PUERTAS SEA ABIERTA PARA EL DESEMBARQUE.

ARTICULO 5 - DELITOS POLITICOS Y MILITARES - (1) NO SE
CONCEDERA LA EXTRADICION SI EL DELITO POR EL CUAL FUE

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SOLICITADA ES POLITICO O DE CARACTER POLITICO.

EN CASO DE SURGIR CUALQUIER CONTROVERSIA RESPECTO DE
LA APLICACION DEL PARRAFO ANTERIOR, CORRESPONDERA DECIDIR
AL PODER EJECUTIVO DE LA PARTE REQUERIDA.

(2) PARA LOS EFECTOS DE ESTE TRATADO, LOS SIGUIENTES
DELITOS NO SE CONSIDERARAN DELITOS INCLUIDOS EN EL
PARRAFO 1:

(A) EL HOMICIDIO U OTRO DELITO INTENCIONAL CONTRA LA
VIDA O LA INTEGRIDAD FISICA DE UN JEFE DE ESTADO O DE
GOBIERNO O DE UN MIEMBRO DE SU FAMILIA, INCLUYENDO LA
TENTATIVA DE COMETER UN DELITO DE ESA INDOLE.

(B) UN DELITO QUE LAS PARTES CONTRATANTES TENGAN LA
OBLIGACION DE PERSEGUIR EN VIRTUD DE UN CONVENIO INTER-
NACIONAL MULTILATERAL.

(3) NO SE CONCEDERA LA EXTRADICION CUANDO EL DELITO
POR EL CUAL FUE SOLICITADA SEA UN DELITO PURAMENTE
MILITAR.

ARTICULO 6 - NON BIS IN IDEM - (1) NO SE CONCEDERA LA
EXTRADICION CUANDO EL RECLAMADO HAYA SIDO SOMETIDO A
PROCESO O HAYA SIDO JUZGADO Y CONDENADO O ABSUELTO
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POR LA PARTE REQUERIDA POR EL MISMO DELITO EN QUE SE APOYE LA SOLICITUD DE EXTRADICION.

(2) CUANDO LAS AUTORIDADES COMPETENTES DE LA PARTE REQUERIDA HAYAN DECIDIDO NO PROCESAR AL RECLAMADO POR EL DELITO EN QUE SE APOYA LA SOLICITUD DE EXTRADICION O HAYAN DECIDIDO PONER TERMINO A CUALQUIER PROCEDIMIENTO PENAL QUE HUBIESEN INICIADO EN SU CONTRA, LA EXTRADICION PODRA SER REHUSADA.

ARTICULO 7 - PRESCRIPCION - NO SE CONCEDERA LA EXTRADICION CUANDO LA ACCION PENAL O LA PENA POR LA CUAL SE PIDE LA EXTRADICION HAYA PRESCRITO CONFORME A LAS LEYES DE LA PARTE REQUIRENTE O DE LA PARTE REQUERIDA.

ARTICULO 8 - PENA DE MUERTE - CUANDO EL DELITO POR EL CUAL SE SOLICITA LA EXTRADICION SEA PUNIBLE CON LA PENA DE MUERTE CONFORME A LAS LEYES DE LA PARTE REQUIRENTE Y LAS LEYES DE LA PARTE REQUERIDA NO PERMITAN TAL PENA PARA ESE DELITO, LA EXTRADICION PODRA SER REHUSADA A MENOS QUE LA PARTE REQUIRENTE DE LAS SEGURIDADES QUE LA PARTE REQUERIDA ESTIME SUFICIENTES DE QUE NO SE IMPONDRA LA PENA DE MUERTE O DE QUE, SI ES IMPUESTA, NO SERA EJECUTADA.

ARTICULO 9 - EXTRADICION DE NACIONALES - (1) NINGUNA DE LAS DOS PARTES CONTRATANTES ESTARA OBLIGADA A ENTREGAR A SUS NACIONALES PERO EL PODER EJECUTIVO DE LA PARTE REQUERIDA TENDRA LA FACULTAD, SI NO SE LO IMPIDEN SUS LEYES, DE ENTREGARLOS SI, A SU ENTERA DISCRECION, LO ESTIMA PROCEDENTE.

(2) SI LA EXTRADICION NO ES CONCEDIDA EN VIRTUD DE LO DISPUESTO EN EL PARRAFO 1 DE ESTE ARTICULO, LA PARTE UNCLASSIFIED

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REQUERIDA TURNARA EL EXPEDIENTE A SUS AUTORIDADES COMPETENTES PARA EL EJERCICIO DE LA ACCION PENAL, SIEMPRE Y CUANDO DICHA PARTE TENGA JURISDICCION PARA PERSEGUIR EL DELITO.

ARTICULO 10 - PROCEDIMIENTO PARA LA EXTRADICION Y DOCUMENTOS QUE SON NECESARIOS - (1) LA SOLICITUD DE EXTRADICION SE PRESENTARA POR LA VIA DIPLOMATICA.

(2) LA SOLICITUD DE EXTRADICION DEBERA CONTENER LA EXPOSICION DEL DELITO POR EL CUAL SE PIDE LA EXTRADICION Y SERA ACOMPAÑADA DE:

(A) UNA RELACION DE LOS HECHOS IMPUTADOS;

(B) EL TEXTO DE LAS DISPOSICIONES LEGALES QUE FIJEN
LOS ELEMENTOS CONSTITUTIVOS DEL DELITO;

(C) EL TEXTO DE LAS DISPOSICIONES LEGALES QUE DETERMINEN
LA PENA CORRESPONDIENTE AL DELITO;

(D) EL TEXTO DE LAS LEYES RELATIVAS A LA PRESCRIPCION
DE LA ACCION PENAL O DE LA PENA;

(E) LOS DATOS Y ANTECEDENTES PERSONALES DEL RECLAMADO
QUE PERMITAN SU IDENTIFICACION Y SIEMPRE QUE SEA
POSIBLE, LOS CONDUCENTES A SU LOCALIZACION.

(3) - - END QUOTE.

2. DETAILS OF NEGOTIATIONS FOLLOW BY SEPTTEL.
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Secure: OPEN
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